

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

C.D.

Claimant

OAH No. 2013060868

vs.

SAN ANDREAS REGIONAL CENTER

Service Agency.

DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 18, 2013, in Campbell, California.

Claimant C.D.'s mother, P.D., and Karen Fessel, Executive Director, Autism Health Insurance Project, represented Claimant, who was not present.

James F. Elliott, MSW, represented San Andreas Regional Center (SARC).

The record closed on September 18, 2013.

ISSUE

Whether SARC is required to continue to pay for 19 hours per week of intensive behavioral intervention services for Claimant, as opposed to the 8 hours per week determined appropriate by SARC.

FACTUAL FINDINGS

1. Claimant, born March 8, 2009, is currently four years old. She lives in San Jose with her mother, father, and uncle. Claimant receives services from SARC pursuant to a diagnosis of Autistic Disorder and Unspecified Mental Retardation in accordance with her Individual Program Plan (IPP).

2. Claimant's diagnoses followed a consultation with her pediatrician when she was two years, nine months of age. Her medical needs were covered at that time through the Healthy Families program, and provided by Kaiser. Her doctor referred her first for speech therapy, and then for a full assessment at Kaiser's Autism Spectrum Disorders Clinic. In September 2012, Claimant began receiving services pursuant to a treatment plan devised by Easter Seals Autism Services.

The Healthy Families program was terminated on April 1, 2013. At that time, Healthy Families/Kaiser was funding Pediatric Play Therapy for two hours per week; Integration Intervention-Speech for two hours per week; and Easter Seals ABA for 20 hours per week.

3. When Healthy Families ended, recipients were transitioned into Medi-Cal/Kaiser as the health insurance provider, and regional centers became responsible for funding intensive behavior services for clients with autism. During the transition period, SARC continued to fund the Easter Seals program for Claimant. SARC psychologist Dr. Carrie Molho reviewed Claimant's needs, and determined that only three of the six domains that Easter Seals was providing were appropriate for SARC to fund: self-help/daily living, behavior, and family education. SARC therefore offered to fund 8 hours weekly of intensive behavioral intervention services.

4. On June 3, 2013, SARC issued a Notice of Proposed Action stating that it proposed to reduce "client support/behavior modification training by vendor Easter Seals from 19 hours per week to 8 hours per week." The reason given is:

Assessment of the vendor's individual service plan by San Andreas Regional Center staff finds that two out of the five goals, totaling 8 hours of intervention per week, are appropriate to meet the needs of the consumer's Individual Program Plan. Regional Center services may not be used to meet educational or medical needs, regardless of whether or not the consumer or guardian chooses to use the generically available services.

5. Claimant's mother, P.D., filed a fair hearing request on Claimant's behalf. She requested that SARC continue to fund the 19 hours "as the payee of last resort." This hearing followed.

Special education services

6. P.D. applied for special education services for Claimant from the local school district. She was accepted for service, and an individualized education plan (IEP) was devised and offered. P.D. refused the offer, based on her opinion that the placement and services were not appropriate for Claimant. As a result, Claimant has never attended a school program. Recently, the school district notified the family that it needed documentary verification that Claimant resided in the district. Claimant and her parents live with family members, however, and were unable to provide the documentation requested. On August 26, 2013, Disability Rights Advocates wrote a letter on Claimant's behalf, demanding that Claimant immediately be enrolled. As of the hearing, the results of the letter were not available, but it is undisputed that Claimant is entitled to receive educational services from her local school district.

7. P.D. credibly testified that a principle reason that she applied for services from SARC was to obtain help with the school district. Claimant's intake service coordinator referred her to the Office of Client's Rights, but it was unable to assist due to caseload issues.

8. Claimant's current service coordinator is Cindy Luger. Luger was aware of Claimant's struggle to obtain appropriate special education services. She testified that when P.D. expressed dissatisfaction with the services being offered by the school district, she suggested P.D. speak again to the school psychologist, but that P.D. "didn't want to do that." Luger testified that she routinely offers advocacy services and helps families navigate the different systems. She said that she will attend IEP meetings if invited, and attends such meetings as often as twice weekly on behalf of clients.

P.D., however, testified that she was told by Luger "Basically we don't do that, we don't do IEP's, we don't do anything with the school districts."

9. The testimony of Luger and P.D. on the advocacy issue could not be completely reconciled. At the least, there was a misunderstanding. But it is clear that Claimant has not received meaningful advocacy services from SARC to assist her in obtaining services from her local school district.

Intensive behavioral services needs

10. Dr. Molho testified concerning her review of the Easter Seals plan and Claimant's need for behavioral services. She noted that SARC contracts with Easter Seals for the Early Start Program, but that Early Start concludes at age three, when school districts assume responsibility for educational services. The different services offered pursuant to the Lanterman Act prevent SARC from continuing to fund the comprehensive services provided by the Easter Seals program. Once a child turns three, and if she is found eligible under Lanterman, SARC must parse out the services that are educational in nature and thus the responsibility of the local school district, and not fund those services. SARC is not allowed

to fund educational services for children once they become eligible for school services at age three.

11. Based on her review of Claimant's records and her extensive expertise in the area of service standards for children with autism, Dr. Molho and the other SARC staff reviewing the case decided that SARC could offer certain behavioral services. These would be targeted to address certain of Claimant's maladaptive behaviors that were not the primary responsibility of the school district. This determination resulted in the offer of 8 hours per week of such services. SARC requested to refer Claimant to a SARC-vendored specialist to obtain more information, but it is unclear whether P.D. has agreed to such an assessment. Dr. Molho's testimony was persuasive.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Developmental Disabilities Services Act:

[I]s two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the community.

(Association for Retarded Citizens v. Department of Developmental Services
(1985) 38 Cal.3d 384, 388.)

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. The Act, however, directs the Department to provide the services through agencies located in the communities where the clients reside. Specifically:

[T]he state shall contract with appropriate agencies to provide fixed points of contact in the community Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers.

(Welf. & Inst. Code, § 4620.)

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. This plan is arrived at by the conference of the consumer or his representatives, agency representatives and other appropriate participants. Once in place:

A regional center may . . . purchase service . . . from an individual or agency which the regional center and consumer . .

. or parents. . . determines will best accomplish all or any part of that [IPP].

(Welf. & Inst. Code, § 4648, subd. (a)(3).)

4. A particular IPP notwithstanding, the direct purchase of services by regional centers is restricted in many respects. Regional centers are specifically charged to provide services in the “most cost-effective and beneficial manner” (Welf. & Inst. Code, § 4685, subd. (c)(3)) and with “the maximum cost-effectiveness possible” (Welf. & Inst. Code, § 4640.7, subd. (b)). To duplicate a service available elsewhere to a consumer is obviously not a cost-effective use of public funds. Accordingly, regional centers are required to “first consider services and supports in the natural community. . . .” (Welf. & Inst. Code, § 4648, subd. (a)(2).) In addition, regional centers are enjoined not to supplant the budget of any agency that has a legal responsibility to serve the general public and that receives public funds for providing those services. (Welf. & Inst. Code, § 4648, subd. (a)(8).) In other words, regional centers may not purchase services and supports to implement an IPP if another public agency is required to provide the services and supports.

5. Services available through other agencies are commonly referred to as “generic resources.” In Claimant’s case, her local school district is a generic resource responsible for providing for her educational needs until she is 22 years old. The fact that she disputes the type of services that the district is offering her is irrelevant to the issue of funding. Claimant’s advocate argues that SARC must fund a service that Claimant needs and wants because SARC is the “payor of last resort.” This argument represents a misunderstanding of the law. SARC cannot legally fund an educational program for Claimant until she attains the age of 22. To do so would be to supplant a generic resource in violation of the Lanterman Act’s provisions. Accordingly, her appeal must be denied.

6. This is not to say that regional centers have no responsibility when another public agency is required to fund services. They are required to “identify and pursue all possible sources of funding” including funding from school districts for consumers eligible for regional center services. (Welf. & Inst. Code, § 4659, subd. (a)(1).)

7. Claimant has had a very difficult time accessing the education services that she needs at this crucial stage in her development. She was not diagnosed in time to avail herself of Early Start services, which end at age three. Her parents now face the very difficult task of advocating on her behalf with a school district that has not to date produced an acceptable educational plan. But it is the public school district’s responsibility to provide a suitable program, and there exist legal remedies, similar to those exercised in connection with this matter, should the district fail in its responsibility. It is recognized that the bureaucratic obstacles are great, but one of SARC’s responsibilities is to assist Claimant with advocacy services vis-à-vis the school district. The evidence showed that SARC, whether because of misunderstandings or for some other reasons, has so far failed to provide the advocacy services so greatly needed. For this reason, SARC will be ordered to provide those services immediately.

ORDER

1. Claimant C.D.'s appeal is denied.
2. SARC shall immediately convene a planning team meeting for the purpose of establishing a plan to assist Claimant with advocating for her special education needs with her local school district. The plan shall then be incorporated into Claimant's IPP and implemented.

DATED: September 30, 2013

_____/_____
MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.